



December 13, 2010

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **MB** Docket No. 10-71

Dear Ms. Dortch:

The undersigned and Brian Frederick, Executive Director of Sports Fans Coalition (“SFC”), met today with Commissioner Clyburn and her Chief of Staff, Dave Grimaldi.

The meeting focused on SFC’s mission to give sports fans a voice in public policy proceedings impacting professional and collegiate games, including media coverage thereof. In particular, participants addressed the impact of the Sports Blackout rule and retransmission consent disputes on sports fans when games are taken off the air, referencing a detailed filing by SFC earlier this year (attached). Participants also addressed the need to re-examine the migration of sports from broadcast to pay-TV service tiers; the withholding of key sports programming by vertically integrated MVPDs, and how media consolidation can exacerbate the problem of sports accessibility.

Sincerely,

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David R. Goodfriend



June 14, 2010

Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Petition for Rulemaking to Amend the Commission's Rules Governing
Retransmission Consent, MB Docket No. 10-71

To the Commission:

The record in this proceeding reveals a battle between broadcast media conglomerates and the pay-TV companies that distribute their programming. The Commission needs to protect a group of people who pay their bills and contribute to ratings but have become collateral damage in this corporate smack-down: sports fans.

Sports fans have become pawns in retransmission consent disputes. When a broadcaster wants to gain leverage in a retransmission consent negotiation, it threatens to take away games from sports fans. At the beginning of 2010, sports fans across the country narrowly missed losing the Sugar Bowl, the Fiesta Bowl, the Orange Bowl, and the NFL playoffs before FOX finally agreed to come to terms with Time Warner Cable and Bright House Networks.¹ In 2004, fans were caught in the middle of a major clash between EchoStar and Viacom/CBS in which fans' access to the Super Bowl and March Madness was at risk.²

¹ See Brian Stelter, *Time Warner and Fox Reach a Cable Deal*, N.Y. TIMES, Jan. 2, 2010, at B1 (reporting that an eleventh-hour retransmission consent deal "covering Fox stations in New York, Los Angeles, Orlando and other markets, avert[ed] a blackout of the weekend's college bowl games in millions of homes."); Marva Hinton, *Will Fox Reach Deal with Bright House in Time for Sugar Bowl?*, WDBO.com, Jan. 1, 2010, available at <http://wdb.com/localnews/2010/01/will-fox-reach-deal-with-brigh.html> (reporting, after a brief extension during talks between Bright House and Fox on the eve of the Sugar Bowl, that "[f]ootball fans are hoping that extension continues").

² See Robert Manor, *Viacom, EchoStar Settle Things*, CHICAGO TRIBUNE, Mar. 12, 2004, available at http://articles.chicagotribune.com/2004-03-12/business/0403120344_1_echostar-communications-corp-dish-network-chief-executive-charlie-ergen (reporting that "Viacom early in the talks threatened to withhold the Super Bowl" from EchoStar's subscribers); R. Thomas Umstead, *Kicking Dish in the Pants*, MULTICHANNEL NEWS, Mar. 14, 2004, available at http://www.multichannel.com/article/59130-Kicking_Dish_In_The_Pants.php (reporting that

The Commission should protect fans from media conglomerates' brass-knuckled business tactics and prohibit broadcasters from blacking out sports during retransmission consent negotiations.

SPORTS FANS COALITION

Sports Fans Coalition, Inc. ("SFC") is a non-profit advocacy organization established last year to give sports fans a voice in public policy debates impacting fans' access to professional and collegiate sports. We have local chapters in major markets around the U.S., including New York City/New Jersey; Philadelphia, PA; Portland, OR; and New Orleans, LA. We have testified before legislatures at the state and federal levels and have appeared on sports talk radio stations in every region of the U.S., from Southern California to Southern Ohio, Wisconsin to Tennessee, Colorado to North Carolina. SFC is a member-driven organization, with all control vested in a duly elected Board of Directors consisting of seasoned professionals from the sports, business, government, legal, and non-profit communities, including a noted sports writer, a former public-company CEO, and former officials of the Bush and Clinton White Houses.³

A common thread throughout our public policy agenda is the bedrock principle that when fans pay a price for their games through public goods, like tax dollars used to build a stadium, or special exemptions from laws passed to facilitate the sport, the fans deserve a fair return on that investment.

FANS HAVE BECOME A POLITICAL FOOTBALL

When it comes to retransmission consent disputes, the fans who are vital to the success of the game and who have contributed to its success through multiple public and private expenditures are treated like a fumbled pigskin.

Without sports fans, there would be no sports media economy. The fans buy the tickets, watch the games, pay for their sports tiers, purchase their sports packages, and wildly support their teams. That support is reflected in the public goods granted by government to keep the games going. Broadcasters, who receive their FCC licenses from the public at no cost, acquire television rights from professional sports leagues, who negotiate those rights under a special federal antitrust exemption enacted just for that purpose,⁴ or collegiate leagues, who enjoy non-

several members of Congress wrote letters to the parties expressing concern that their constituents would "lose access to CBS coverage of the National Collegiate Athletic Association men's basketball tournament," and that "March Madness is going to turn into March Anger" if Viacom pulled its CBS signals).

³ See www.sportsfanscoalition.org. We also have a non-controlling Advisory Board comprised of non-profit, academic, and corporate advisors.

⁴ See 15 U.S.C. § 1291, Sports Broadcasting Act of 1961 (granting professional sports leagues an antitrust exemption for the collective negotiation of over-the-air broadcast rights to FCC-licensed broadcasters).

profit tax status and often federal and state subsidies.⁵ The televised games often are played in stadiums and arenas built with taxpayer dollars or regulatory waivers.⁶ In addition to the public goods spent on sports, the fans themselves pay for sports programming with the legitimate expectation that they will watch the games for which they pay.

Despite fans' public and private contributions to sports, however, they are rewarded with threats and gamesmanship during retransmission consent disputes. The recurring threat of blackouts during these disputes causes significant uncertainty, frustration, anxiety, and confusion for sports fans. Fans must scramble to make alternate plans when disputes threaten to disrupt or block access to major sporting events. For example, as the FOX disputes went down to the wire heading into New Year's Day this year, fans did not know whether to go ahead with viewing parties.

Compounding the threat to fans is the practice by media conglomerates of tying broadcast carriage rights with non-broadcast channels. This means, for example, that not only are games carried on one of the "Big 4" broadcast networks at risk, but so are games on cable/satellite sports channels.

In the past, if a broadcaster blacked out its signal from a pay-TV provider, fans could use their over-the-air antennas to watch a game on a broadcast station. Not so today. The federal government just finished a major publicity campaign leading up to the digital transition in which it reassured fans and the rest of the public that by subscribing to cable or satellite, viewers could watch digital broadcasts. Those public service announcements did not add, "...and be sure to keep a spare digital antenna in your closet in case your games are taken away during a contract dispute." Fans shouldn't be forced to purchase additional equipment—like digital converter boxes or antennas—just to prepare for the possibility of a blackout.

And in the event a blackout actually occurs, unprepared fans (or fans in areas without access to over-the-air signals) may end up missing the sporting event entirely. The game, once played, cannot be replayed; the excitement for fans of a live sports broadcast is lost forever.

Sports fans do not care who "wins" in these disputes or how they get resolved. Fans simply want to avoid being held hostage as broadcasters battle over fees with pay-TV providers.

⁵ National Collegiate Athletic Association, NCAA's Tax-Exempt Status, <http://www.ncaa.org/wps/wcm/connect/public/NCAA/Key+Issues/Commercialism/NCAA+tax+exempt+status> ("The NCAA is a nonprofit, higher education association that is exempted from federal income tax by section 509(c)(3) of the federal tax code.").

⁶ See Tom Ferrey, *South Bronx Neighborhood Taking Hit from New Stadium*, ESPN THE MAGAZINE, Sep. 19, 2008, available at <http://sports.espn.go.com/mlb/news/story?id=3598021> (reporting that "with the state chipping in for garages and the federal government allowing the aggressive use of tax-free construction bonds, the total public subsidy has grown to \$656 million" for the new Yankees Stadium); Patrick McGreevy, *Environmental Exemptions OK'd for Football Stadium in City of Industry*, L.A. TIMES, Oct. 15, 2009, available at <http://articles.latimes.com/2009/oct/15/local/me-stadium15> (reporting that "the California Senate approved a measure . . . that exempts the [L.A. football stadium development] project from state environmental laws").

“NOTICE” IS FRENCH FOR “SOAK THE FANS”

Some commenters in this proceeding suggest that the viewing public will be protected if given advance notice that a network feed may be withdrawn because of a payment dispute.⁷ But such notice would not actually serve sports fans’ interests. It doesn’t do any good to tell fans that a game scheduled to be aired a month later *might* be unavailable. That message – that a broadcaster *may* deprive fans of a big game in the future – only makes the situation more confusing.

Taking steps to install a digital antenna and converter box—even assuming a fan can get them to work and over-the-air signals are available—is a major hassle that most fans will not undertake merely because there is a possibility of a blackout down the road.

The prospect of switching to another service provider is equally problematic. Switching takes time and money and may force the sports fan to give up other service features that are desirable (such as other sports packages). And there is no assurance that, upon switching, the new video distributor won’t be subject to the same blackout risks a short time later. Switching back and forth among providers every time there’s a fee dispute with a broadcaster is obviously untenable.

In short, receiving notice of a pending dispute is not helpful absent certainty as to the outcome. Even then, fans aren’t looking to jump through hoops to watch a game; they just want access over cable and satellite to the same sporting events that are shown over the air for free.

PROHIBIT BLACKOUTS OF SPORTING EVENTS

From the fans’ perspective, the best solution would be a rule that prohibits broadcasters from pulling their signals—and blocking access to sporting events—in the first place. The FCC has a long history of laying down ground rules for what is and is not permissible behavior during a retransmission consent negotiation. Cable providers, for example, may not take down broadcast signals during a Nielsen ratings “sweeps” period. This rule is designed to protect ratings harm to broadcasters during a negotiation.⁸ Why not protect sports fans, too?

Broadcasters have an obligation to serve the public interest, and the FCC can enforce that obligation by preventing them from withdrawing, or threatening to withdraw, popular sports programming from the cable or satellite services at the expense of sports fans, who do not want to be dragged into these fights.

⁷ See, e.g., LIN Comments at 14; NAB Comments at 62.

⁸ 47 C.F.R. § 76.1601; *Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965 ¶¶ 108-09 (1993) (implementing the “sweeps” rule).

If a broadcaster is willing to broadcast a game over the air for free, there is no reason why it should block access for fans who pay for a cable or satellite subscription. If sports fans can look forward to big games without the stress of wondering whether payment disputes will disrupt access, they will reward the television networks and distributors by being loyal viewers.

Sports fans across the United States ask that the Commission bring an end to the personal fouls imposed on fans during retransmission consent fights. Let's put the fans on a level playing field for once and keep the games on.

Sincerely,

Sports Fans Coalition